IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 369 of 1998

in

SPECIAL CIVIL APPLICATION No 359 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JANTA TOURING TALKIES
Versus
STATE OF GUJARAT

Appearance:
MR GM JOSHI for Appellant
MR RC KODEKAR AGP for Respondent Nos. 1 and 2
MR PJ KANABAR for Respondent No. 3

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 27/03/2000

ORAL JUDGEMENT (Per J.M. Panchal, J.):

1. Judgment under challenge in this appeal which is filed under clause 15 of the Letters Patent is rendered by the learned Single Judge on March 5, 1998 in Special Civil Application No. 359 of 1998 whereby prayer made by the appellant to set aside decision of the Licensing Authority of not renewing licence for its touring cinema beyond January 31, 1998, is turned down.

2. The appellant had established a Janta Touring Cinema at village Babra, on February 11, 1986 pursuant to a licence issued by the Licensing Authority and Executive Magistrate-cum-Mamlatdar, Babra. The licence was renewed from time to time upto December 31, 1997. The respondent No.3 was earlier operating another touring cinema at Babra which was subsequently converted into a permanent cinema. As the licence granted to the appellant was to expire on December 31, 1997, the appellant had made an application for renewal of the licence. The appellant was informed by the respondent No.2 that because of the fact that a permanent cinema was established at village Babra, the appellant's licence was not liable to be renewed. According to the appellant, it had taken up the matter with the State of Gujarat as a result of which its touring cinema licence was renewed upto January 31, 1998. This decision of the State of Gujarat was challenged by the respondent No.3 before the High Court by way of filing Special Civil Application No. 122 of 1998. On the date of hearing of the petition, the learned A.G.P. appearing for the Additional Chief Secretary as well as the Licensing Authority had made a statement that the Government would not renew the licence granted to the appellant beyond January 31, 1998. In view of that statement, the respondent No.3 had sought permission to withdraw the petition. The respondent No.3 was accordingly permitted to withdraw the petition but Court had also reserved liberty to the appellant to challenge the decision of the Licensing Authority of not renewing touring cinema licence. The petition was accordingly disposed of by order dated January 17, 1998. The decision not to renew the licence beyond January 31, 1998 was communicated to the appellant which was challenged by it in Special Civil Application No. 359 of 1998. What was pleaded by the appellant in the petition was that the respondent authorities had failed to exercise jurisdiction vested in them on a misconception of law by proceeding on the basis that if a permanent cinema is set up, licence for touring cinema cannot be renewed and,

therefore, the impugned decision was liable to be set aside. It was also averred that the word "place" in the proviso to Rule 107 of the Bombay Cinema Rules, 1954 means a site and not an area in the sense of a town or village as construed by the respondents and, therefore, the respondents should be directed to renew touring cinema licence of the appellant. By filing the petition it was prayed to issue a writ of mandamus or any other appropriate writ, order or direction declaring that the action of the respondents Nos.1 and 2 in not renewing the licence beyond January 31, 1998 was ultra vires the provisions of the Bombay Cinema (Regulation) Act, 1953 ('the Act' for short) and the Bombay Cinema Rules 1954 ('the Rules' for short) as well as Articles 14, 19 (1) (g) and 21 of the Constitution. The appellant had also prayed to direct the respondents Nos.1 and 2 to renew the licence beyond January 31, 1998.

3. Reply affidavit was filed by respondent No.3 controverting the averments made in the petition. In the said reply it was pleaded that permanent cinema of the respondent No.3 having been established in Babra village, touring cinema licence of the appellant was not liable to be renewed and, therefore, the petition should be rejected.

4. Mr. P. G. Vyas, Secretary to the Government of Gujarat, Information, Broadcasting and Tourism Department, Sachivalaya, Gandhinagar, had filed affidavit in reply disputing the claims raised in the petition. What was stated in the reply was that in view of the provisions of the Rules, licence of a touring cinema at a place can be renewed from time to time until such time as a permanent cinema, a Janta Cinema or, as the case may be, a drive-in cinema is opened, or allowed to remain open, at the place and, therefore, the word "place" obviously refers to an area and not to site as was contended by the appellant. It was further mentioned in the reply that in view of the representation made by the respondent No.3 the District Magistrate, Amreli as well as Mamlatdar, Babra were advised by the State Government by a letter dated December 17, 1997 not to renew the licence of the appellant after December 31, 1997 and, therefore, the decision of the licensing authority being in consonance with the provisions of the Act and Rules, the petition should be dismissed.

5. The learned Single Judge has construed the word "place" to mean the area comprising a village or a town and not site or place of exhibition of a touring cinema. In view of this interpretation, the learned Single Judge

has dismissed the petition by judgment dated March 5, 1998 giving rise to the present appeal.

6. Mr. G.M. Joshi, learned counsel for the appellant, urged that the object and the scheme of the Act provides for regulating exhibitions by means of cinematographs and the licensing of places in which cinematograph films are exhibited and thus the word "place" has a definite meaning i.e., site or place of exhibition and, therefore, the impugned judgment should be set aside. According to the learned counsel, the word "place" is defined to include a house, building, tent and any description of transport whether by sea, land or air and if a wider meaning to the said word is given as is done by the learned Single Judge it would amount to legislation by the Court which is not permissible. What was emphasised was that the meaning of the word "place" as construed by the learned Single Judge does not fit in with the object of the Act but has rendered the whole Act meaningless and, therefore, the appeal should be accepted. After referring to the statutory definition of the word "place" it was stressed on behalf of the appellant that the word 'place' used in the definition clause of the Act should be given the same meaning all throughout and different meanings to the said word should not be given. The claim advanced by the learned counsel for the appellant was that the word "place" should be understood in the context of site or place of exhibition which includes the place which is static as well as mobile and, therefore, the petition ought to have been accepted by the learned Single Judge. It was asserted on behalf of the appellant that Rule 107 of the Rules relates to renewal of licence at the same place and the purpose of this rule being to prevent the possibility of establishment of two different cinemas of the same kind at the same place, the word "place" should not have been construed to mean an area. The learned counsel for the appellant drew the attention of the Court to the original proviso to Rule 107 of the Rules which was subsequently amended by the legislature and pleaded that the reference to the word "place" is in respect of location but not the area as is construed by the learned Single Judge. What was highlighted by the learned counsel for the appellant was that it was never the intention of the legislature to prohibit establishment of touring cinema where a permanent cinema is set up and if the interpretation placed by the learned Single Judge is accepted it would be violative of the rights of the appellant guaranteed under Article 19 (1) (g) of the Constitution. It was also submitted that the Licensing Authority has to take decision for renewal of licence on its own without being

guided by the mandate of the State Government and, therefore, the decision of the licensing authority taken at the behest of the State Government should be set aside. In support of these submissions, learned counsel for the appellant placed reliance on decisions rendered in (i) M/s. Krishna Cinema, a partnership firm, Rajkot and others v. The State of Gujarat and another, AIR 1971 Gujarat 103; (ii)Junagadh Cinema Association and another v. State of Gujarat and others 1991 (2) GLH 100 and (iii) Collector of Customs, Calcutta v. M/s. Sun Industries, 1988 (Supp.) SCC 342.

7. Mr. R.C. Kodekar, learned A.G.P., contended that the definition of the word "place" as given in the Act is inclusive and having regard to the subject and context in which the said word has been used in rule 107 of the Rules it cannot be said that the interpretation placed by the learned Single Judge on the said word is erroneous in any manner so as to warrant interference of the Court in the present appeal. After emphasising that the right conferred by Article 19 (1) (g) of the Constitution is always subject to reasonable restraints and restrictions, the learned A.G.P. submitted that no right of the petitioner is violated when the licence of its touring cinema is not renewed on the ground that a permanent cinema has been set up in village Babra by respondent No.3. According to the learned A.G.P., subject to the control of the State Government the Licensing Authority is expected to grant licence under the Act and, therefore, direction given by the State Government to the Licensing Authority in the matter of renewal of licence cannot be regarded as either illegal or arbitrary. In support of his submission, learned A.G.P. placed reliance on the decision rendered in the case of R.N. Vallinayagam Pillai, Proprietor of Sri Shanmugananda Touring Talkies v. State of Madras and another, AIR 1952 Madras 528.

8. We have considered the arguments advanced at the bar as well as the provisions of the Act and the Rules. It seems to us apposite to advert first to the relevant provisions of the Act and the Rules to better understand and appreciate the rival contentions. The title of the Act suggests that it is a Regulatory Act. Preamble to the Act generally serves as a key to discuss the purpose and object of the Act. The dual purpose of the Act envisaged in the preamble are to provide for regulating exhibition of cinematograph films and the licensing of the places in which cinematograph films are exhibited. Sections 1 and 2 deal with the title, commencement and definition of certain terms used in the Act. Section 3

prohibits anyone from exhibiting cinematograph films in any place other than a place licenced under the Act or otherwise than in compliance with the conditions and restrictions imposed by such licence. Section 4 prescribes the authority that can issue the licence under the Act. Section 5 provides restrictions on the powers of licensing authority and inter alia stipulates that subject to the control of the State Government the licensing authority may grant licence under the Act of course subject to the restrictions as may be prescribed and fulfillment of substantial compliance with the provisions of the Act and the Rules. Section 6 of the Act enables the State Government or the Licensing Authority to suspend the exhibition of films in certain cases whereas Section 7 provides for penalties for contravention of the provisions of the Act. Section 8 empowers the competent authority to revoke or suspend the licence in the event of any contravention by the holder of the licence of any of the provisions of the Act or the Rules whereas Section 8A enables an aggrieved person to file an appeal before the State Government against an order of the Licensing Authority refusing to grant licence or revoking or suspending any licence. Powers of Revision and Review are also conferred on the State Government under Section 8B and 8C of the Act respectively. Section 9 of the Act enables the State Government to make rules for the purpose of carrying into effect the provisions of the Act and enumerates particular matters with reference to which Rules can be made by the State Government without prejudice to the generality of the powers to make such rules. In exercise of rule making powers, the State Government has made rules called the Bombay Cinema Rules, 1954. Rule 2 of the Rules deals with definition of certain terms used in the Rules. Rule 3 provides for granting of No Objection Certificate whereas Rule 8 relates to Building Rules which inter alia provides that Rules 9, 13, 14, 15, 16, 17, 20 (1), 20 (2), 21, 22 and 23 only shall apply in the case of touring cinemas. Rule 9A relates to building material to be used in touring cinema and states that in the case of a touring cinema, the external walls shall consist of tarpaulin or thick hession soaked in fire resisting solution and such cinema need not have a roof over the auditorium. Rule 26 deals with sanction of the Electric Inspector to be obtained for all electrical work but the first proviso to the said rule makes a concession in favour of a touring cinema and stipulates that in case of a touring cinema no fresh sanction shall be necessary if the electrical installation is carried out in accordance with the plans sanctioned at any previous camp of such cinema. Rule 92 relates to building permission

to be obtained by the person who proposes to put up a cinema. Rule 102 of the Rules prescribes as to how an application for licence should be made and it should contain what. According to the said rule, an application for cinema licence has to be made to the Licensing Authority and should contain a statement as to the nature and extent of the interest of the applicant in the cinema and also his name or names of the Manager or Managers nominated by the applicant as referred to in Rule 117. The application has to be accompanied by documents such as (i) a true copy of the No Objection Certificate issued under Rule 6, (ii) a true copy of the Building permission issued under Rule 93, (iii) a certificate from an authorised architect or a qualified engineer and countersigned by the Executive Engineer concerned to the effect that the construction of the Cinema is sound and in accordance with the requirements laid down in Chapter III and that all directions given or conditions specified by the Executive Engineer concerned have been complied with and that precautions against fire have been taken as laid down in Chapter V, (iv) a certificate from the Government Electrical Inspector or the Assistant Electrical Inspector concerned to the effect that the electrical installation in the cinema is in order and has been inspected and passed by him and conform to the requirements of the Rules under the Indian Electricity Act, 1910 and to the Rules specified in Chapter IV and Rules 79, 80(3), 82, 83, 84 and 87 in Chapter V, (v) a certificate to the effect that there is no objection from the health point of view for the grant of a licence and (vi) a certificate from the Authority concerned that a telephone in working order has been duly installed in the cinema.

9. In this appeal, the Court is concerned with interpretation of Rules 103 and 107 of the Rules and, therefore, we propose to quote them in extenso which are as under:

> "103. Grant of Cinema Licence: The Licensing Authority on receipt of documents and certificate referred to in rule 102 being satisfied that all the necessary Rules have been complied with may grant a Licence for a cinema to the applicant on such terms and conditions and subject to such restrictions as the Licensing Authority may determine. The cinema licence shall be in Form "E". Provided that a touring cinema licence shall not be valid beyond the district of issue and ordinarily touring cinema licenses shall not be granted for places where there is already a

permanent or quasi permanent cinema but the Licensing Authority may in his discretion permit a touring cinema, to operate at a place where there is already a permanent or quasi-permanent cinema on occasions such as fairs and melas or when the touring cinema exhibits film of a kind different from those exhibited by non-touring cinema e.g. educational films or where it caters for a different public."

"107. Renewal of Licenses: The Licensing Authority may on application being made to him in that behalf renew the Cinema licence for the requisite period subject to Rule 105 above. An application for the renewal of a licence shall be made in the manner laid down in Rule 102 but it shall not be necessary to attach to the application for renewal the true copy of the No Objection Certificate and the true copy of the Building Permission unless specifically required by the Licensing Authority:

Provided that in the case of the touring cinemas and of premises in any area duly licensed for use for Cinematograph exhibition before the coming into force of these rules in that area a certificate of the nature referred to in sub-rule (3) of rule 102 from the Executive Engineer concerned in lieu of such certificate from an authorised architect or a qualified engineer, may be attached.

Provided further that the licence of a touring cinema at a place may be renewed, from time to time, until such time as a permanent cinema, a Janta Cinema or, as the case may be a drive-in-cinema is opened, or allowed to remain open, at the place, in accordance with the provisions of these rules."

10. A close examination of the provisions of the Act reveals that definition of the word "place" as given in Section 2 of the Act is inclusive and not exhaustive. The Legislature has power to define a word even artificially. So the definition of a word in the definition Section may either be restrictive of its ordinary meaning or it may be extensive of the same. Where the term "mean" is used, it normally means what is stated in the definition unless the context otherwise requires. Where the term "includes" is used, the word not only bears its ordinary popular and natural meaning

but in addition to that it also bears its external statutory meaning. Use of the expression "includes" supposes that the term is not complete or exhaustive but enumerative. The expression "includes" is very generally used in the interpretation clause in order to enlarge the meaning of the words or phrases occurring in the body of the statute. Where these words are used then the term defined must be considered as comprehending such things as they signify according to their natural import as well as also those things which the interpretation clause declares that they shall include. According to the dictionary meaning, the word "place" also means an area, village or town and, therefore, it would be incorrect to suggest that natural import of the said meaning of the word is given go-by by the Legislature while defining the word "place" in the Act. The contention that the word "place" means one thing and has been used throughout to mean 'site', cannot be accepted. It is well settled principle of interpretation of statute that same word may mean one thing in one context and another in a different context. For this reason, the same word used in different Sections of a statute or even when used at different places in the same clause or Section of a statute may bear different meaning. Language which on its construction results in absurdity, inconsistency, hardship or strange consequences is not readily accepted as unambiguous because the Courts are not always prepared to concede as plain language which involves absurdity and inconsistency. It is true that when the language is fairly and reasonably open to only one meaning, hardship or inconvenience or surprising results are no considerations for refusing to give effect to that meaning. But such cases are rare for absurd and unreasonable results are not intended by the Legislature and the language used is seldom so plain or inflexible that the Courts are not able to avoid them. It is specifically provided in Section 2 of the Act that unless there is anything repugnant in the subject or context, the word "place" includes a house, building, tent and any description of transport, whether by sea, land or air. The meaning of the words and expressions used in an Act must take their colour from the context in which they appear and the subject matter they deal with. When the context makes meaning of a word quite clear it becomes unnecessary to search for and select a particular meaning out of the diverse meanings a word is capable of, according to lexicographers. Where the context makes the definition given in the interpretation clause inapplicable, a defined word when used in the body of the statute may have to be given a meaning different from that contained in the interpretation clause. All

definitions given in an interpretation clause are, therefore, normally enacted subject to the qualification - "unless there is anything repugnant in the subject or context", or 'unless the context otherwise requires'. Even in the absence of an express qualification to that effect such a qualification is always implied. It is well settled that all statutory definitions or abbreviations must be read subject to the qualification variously expressed in the definition clauses which created them and it may be that even where the definition is exhaustive inasmuch as the word defined is said to mean a certain thing, it is possible for the word to have a somewhat different meaning in different sections of the Act depending upon the subject or context. Normally, in finding out the meaning of a word in various Sections of the Act the meaning to be ordinarily given to it is that given in the definition clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section i.e., 'unless there is anything repugnant in the subject or context'. In view of this qualification, even if the provisions of the Act are strictly construed as is laid down in M/s. Krishna Cinema, a partnership firm, Rajkot and others (supra), the Court has not only to look at the words but also to look at the context, the collocation and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances. In Vanguard Fire and General Insurance Company Limited, Madras v. Fraser & Ross, AIR 1960 SC 971, the question before the Supreme Court was as to construction of the word "insurer" as used in Sections 33 (1) and 2-D of the Insurance Act, 1938 which reads as follows:

"33(1): The Central Government may at any time by order in writing direct the Controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him".

Section 2-D of the Insurance Act, 1938 reads as under:

"2-D: Every insurer shall be subject to all the provisions of this Act in relation to any class of insurance business so long as his liabilities in India in respect of business of that class remain unsatisfied and not otherwise provided

for".

Section 2 (9) of the Insurance Act, 1938 defines an 'insurer' as a person carrying on the business of 'insurance'. The contention before the Supreme Court was that Section 33 (1) and 2-D did not apply to an insurer who had closed his business completely as the definition of the word insurer in Section 2 (9) postulates actual carrying on of the business. Rejecting the above contention the Supreme Court pointed out that in the context of Sections 33 (1) and 2-D and "taking into account the policy of the Act and the purposes for which the control envisaged by the Act was imposed on insurers", the word 'insurer' in the said Sections also refers to insurers who were carrying on the business of insurance but have closed it. Again in State of Madhya Pradesh v. Saith Skelton (P) Ltd., AIR 1972 SC 1507, in construing the word 'Court' in Section 14 (2) of the Arbitration Act, 1940 it was held that the word Court as used therein meant a Court which appointed the arbitrator and the definition in Section 2 (c) of the Act which defines 'Court' as meaning a Court which would entertain a suit on the subject-matter does not govern Section 14 (2) as the context made that definition inapplicable. Similarly, in construing the word 'workman' in Section 33-C (2) of the Industrial Disputes Act, 1947, the Supreme Court in National Building Construction Corporation Ltd. v. Pritam Singh Gill, AIR 1972 SC 1579 held that the word includes a dismissed workman although in the definition of that word as given in Section 2, a dismissed workman is included only for the purpose of industrial disputes under Section 10.

As is clear from the above principles, the word "place" cannot be interpreted without reference to the subject or context.

11. The decision in Collector of Customs (supra) relied on by the learned counsel for the appellant does not help the appellant to canvass the point that the word 'place' should be construed to mean a 'site'. In that case the question considered by the Supreme Court was as to export of goods when can be said to be complete within the meaning of Section 2 (18) of the Customs Act, 1961 read with Rule 2 (c) of the Customs and Central Excise Duties Drawback Rules, 1971 so as to entitle the respondent to drawback under Section 75. The Supreme Court has interpreted the expression "taking out..... to a place outside India" in Rule 2 (c) to mean that it covers taking out to the high seas as high seas would also mean a place outside India if it is beyond the

territorial waters of India. What is laid down by the Supreme Court is that the expression "place" depends for its connotation on the context in which it is used. According to the Supreme Court the word is generally found in conjunction with other words which gives it a colour, and is usually controlled by its context. In our view, this judgment does not help the appellant but it supports our view that the word "place" must be interpreted in the subject and context in which it is used. In order to understand the subject and the context in which the word 'place' is used, it would be relevant to analysis rule 103 of the Rules. Rule 103 deals with grant of cinema licence. The first part of the rule provides that the Licensing Authority on receipt of documents and certificate referred to in rule 102 being satisfied that all the necessary rules have been complied with may grant a licence for a cinema to the applicant on such terms and conditions and subject to such restrictions as the Licensing Authority may determine. Cinema Licence has to be issued in Form No."E". The first proviso to rule 103 stipulates that a touring cinema licence shall not be valid beyond the district of issue. It further provides that ordinarily touring cinema licenses shall not be granted for places where there is already a permanent or quasi permanent cinema but the Licensing Authority may in his discretion permit a touring cinema to operate at a place where there is already a permanent or quasi permanent cinema on occasions such as fairs and melas or when the touring cinema exhibits film of a kind different from those exhibited by non-touring cinema, e.g., educational films or where it caters for a different public. The proviso contemplates that more than one touring cinema licence can be granted for places. If the word "place" is interpreted to mean as 'site', the provision enabling the Licensing Authority to grant more licence than one for touring cinema would become redundant. What is contemplated by the proviso is that ordinarily touring cinema licence shall not be granted for places where there is already a permanent or quasi permanent cinema. The reasonable interpretation which can be placed on this proviso would be that more than one touring cinema licence can be granted in a place meaning thereby in an area but when there is already a permanent or quasi permanent cinema in that area ordinarily touring cinema licence will not be granted, of course, subject to the discretion of the Licensing Authority to grant such licence on certain occasions. As noted above, the licensing authority has discretion to grant licence to a touring cinema on certain occasions even though a permanent or quasi-permanent cinema is established at a

place. If the word 'place' is interpreted to mean 'site', it would mean that the licensing authority can grant licence to establish touring cinema at the very site where a permanent or quasi-permanent cinema is set up. Such an interpretation is bound to result into absurdity, inconsistency, hardship as well as strange consequences and, therefore, will have to be avoided. The Legislature could not have intended that there can be a permanent or a quasi-permanent cinema as well as a touring cinema at the same site and, therefore, the word 'place' will have to be construed to mean an area comprising a village or town.

12. The second proviso to rule 107 of the Rules will have to be read subject to the provisions of rule 103 because rule 107 deals with renewal of licences which are granted under rule 103. When the second proviso to rule 107 postulates that the licence of a touring cinema at a place may be renewed from time to time until such time as a permanent cinema, a Janta Cinema or, as the case may be, a drive-in cinema is opened, or allowed to remain open, at the place, it means that the 'place' has reference to an area and not to the 'site' where the permanent cinema or Janta cinema is erected or established.

13. The decision in the case of Junagadh Cinema Association (supra) does not support the contention of the appellant that the word 'place' should be construed to mean 'site'. In that case, a Division Bench of this Court has held that requirement of licence for exhibition of cinematograph films under Section 3 of the Bombay Cinema Regulations Act, 1953 is in respect of a place where public exhibition is given by means of a cinematograph and as exhibition by means of cinematograph by Video Cable Network through pre-recorded cassettes amounts to private exhibition a licence under the Act is not required for such exhibition. In our view the word "place" as occurring in either rule 103 or second proviso to rule 107 is not interpreted by the Division Bench in the above referred to judgment and, therefore, the said decision is of no help to the appellant. Having regard to the context and subject in which the word 'place' is used in Rule 103 and Rule 107 of the Rules, we are of the opinion that the interpretation placed by the learned Single Judge on the word 'place' to mean an area comprising a village or a town and not 'site' is eminently just and needs no interference by us in the present appeal.

14. The contention that the interpretation placed by

the Court would defeat the right of the appellant guaranteed under Article 19 (1) (g) of the Constitution and, therefore, the word "place" should be construed to mean "site" has no substance. In order to serve the interest of public generally and to provide benefit to any particular locality or localities as enjoined by the provisions of the Act, the rule making authority has classified the cinema into four categories of which touring cinema constitutes one for carrying out the purpose of the Act. The touring cinemas are obviously intended to serve the interest of the people of the towns and villages. In the very nature of the description of the touring cinema and other provisions applicable to them, they are primarily meant for touring or moving from place to place obviously in the rural area to cater the needs of the rural populace which apparently requires little investment and requires to provide less facilities and comforts to the cine-goers. Neither the Act nor the Rules expect people to go to small towns, villages or hamlets to invest huge money in the construction of permanent cinema or as a matter of fact even quasi permanent cinema to cater the needs of rural populace. Undoubtedly, the Act does not prohibit or prevent but only provides for regulating exhibition of cinematograph films and the licensing of places in which cinematograph films are exhibited in the State. The question therefore is whether Rule 107 regulates or prohibits the granting of licences to touring cinemas for exhibiting cinematograph films. The rule undoubtedly imposes restrictions on the grant of touring cinema licences. The element of restriction or restraint is inherent both in regulative measures as well as in prohibitive or preventive measures. The term "regulate" as defined in Shorter Oxford English Dictionary is as follows: "to control, govern or direct by Rule or regulations; to subject to guidance or restrictions; to adapt to circumstances or surroundings". The term "prohibit" is defined "to hold back; to forbid; to prevent, hinder or debar; to forbid or prevent from doing something". In other words, the term 'prohibit' postulates negative command. Thus, seeing from the meaning of the expressions 'regulate' and 'prohibit', it is clear that the element of restriction is found in both but it varies only in degree. No doubt, regulation and governance of a trade may involve the imposition of restrictions on its exercise both as to time and to a certain extent as to place where such restrictions are in the opinion of the public authority necessary to prevent nuisance or for the maintenance of order. But there is a marked distinction to be drawn between the prohibition or prevention of a trade and the regulation or governance of it, and indeed

the power to regulate and govern seems to imply the continued existence of that which is to be regulated or governed. In Indu Bhusan Bose v. Rama Sundari Debi and another, AIR 1970 SC 228, the Supreme Court after considering the scope of the word "regulation" observed as under:

> "The dictionary meaning of the word "regulation" in the Shorter Oxford Dictionary is "the act of regulating" and the word "regulate" is given the meaning "to control, govern or direct by rule or regulation". This entry, thus, gives the power to Parliament to pass legislation for the purpose or directing or controlling all house accommodation in cantonment areas. Clearly, this power to direct or control will include within it all aspects as to who is to make the constructions under what conditions the constructions can be altered, who is to occupy the accommodation and for how long, on what terms it is to be occupied, when and under what circumstances the occupant is to cease to occupy it, and the manner in which the accommodation is to be utilised. All these are ingredients of regulation of house accommodation and we see no reason to hold that this word "regulation" has not been used in this wide sense in this entry."

It would, therefore, seem to us reasonable to deduce that the word "regulation" is a word of broad import having wide meaning comprehending all facets not only specifically enumerated in the Act but also embrace within its fold the powers incidental to the regulation envisaged in good faith in the interest of the general public. Court has to recognise this power of the Government in public interest. Exhibition of approved cinematograph films carried on by the appellant who is owner of a touring cinema is undoubtedly a trade or business guaranteed under Art. 19 (1) (g). In such a trade or business, it is generally competent for the State to make regulatory provisions by imposing in the interest of general public reasonable restriction on the exercise of right conferred by clause (g) of sub-Art. (1) of Article 19 on the owners of the touring cinemas. In Harakchand Ratanlal Banthia and others v. Union of India and others, AIR 1970 SC 1453, the Supreme Court has stated in para 16 thus:

> "It is necessary to emphasis that the principle which underlines the structure of the rights guaranteed under Art.19 of the Constitution is the principle of balancing of the need for

> individual liberty with the need for social control in order that the freedoms guaranteed to the individual subserve the larger public interests. It would follow that the reasonableness of the restrictions imposed under the impugned Act would have to be judged by the magnitude of the evil which it is the purpose of the restraints to curb or eliminate."

Bearing these principles in mind, we shall now examine whether the restrictions placed by second proviso to Rule 107 are reasonable. The policy envisaged by the legislature that licence of touring cinema should not be renewed where a permanent cinema is established is to avoid unhealthy competition between the operators of the permanent cinema and the touring cinema and between the holder of one touring cinema and another touring cinema not only in the interest of the general public but also in the interest of cinema operators themselves. Such a restriction if it is reasonable can be sustained under clause (6) of Article 19 of the Constitution as it empowers the State Government to grant monopoly in any trade or business in its own favour or in favour of a Corporation owned or controlled by it and not in favour of another citizen or class of citizens but this does not prevent the State from regulating trade and business to avoid evils of unhealthy competition and encourage healthy competition which always prove beneficial to the consumers. If a touring cinemas is permitted to be established in an area where a permanent cinemas is being operated, certainly the touring cinema holder who has invested practically very small capital and is subject to liberal restrictions and conditions in providing seating accommodations, sanitation, protection against fire accident and traffic hazard, etc., can easily enter into unhealthy competition with a permanent cinema holder who has invested huge capital and who is required to provide better safety measures and facilities to the cine-goers and in such a process it is not unlikely that permanent cinema holder in long run has to wind up his trade and business which would adversely affect the public interest and benefits enjoyed by the people of the locality or localities. The reasonableness of the provisions that licence of touring cinema should not be renewed where a permanent cinema has come up should be considered not only from the point of view of fire hazard or traffic hazard but also from the point of view of unhealthy competition in trade itself which would ultimately affect the public interest. In the circumstances, we are of the opinion that having regard to the purpose of the Act the provision that licence of a touring cinema should not be

renewed where a permanent cinema is established is quite reasonable and in the interest of the general public. Therefore, the second proviso to rule 107 of the rules is saved by clause (6) of Article 19 of the Constitution.

15. At this stage it would be instructive to refer to a Division Bench judgment of Madras High Court rendered in the case of R.N. Vallinayagam Pillai (supra). In that case the petitioner had applied to the District Magistrate, Tirunelveli under the Cinematograph Act to run a touring cinema called "Sri Shanmugananda Touring Talkies" at a village. He had previously obtained necessary licence under the Places of Public Resort Act, paid the prescribed fee for the licence and stated in the petition that he had complied with other rules and conditions under the Cinematograph Act. The District Magistrate passed an order refusing to grant licence. The refusal was because of certain instructions issued by the Government in two orders. In the first order the Government had instructed the licensing authority to restrict the number of touring cinemas in places where there were permanent cinemas in order to prevent unhealthy competition and to ensure public safety. In places where there was only one permanent cinema, the licensing authorities were instructed to use the discretion vested in them to grant or refuse licenses to touring cinemas. There were detailed instructions as regards the grant of licences to permanent and touring cinemas based on the population of the area sought to be exploited. It was inter alia directed that for places with a population of over 50000 no touring cinema should be allowed within a distance of three miles from the nearest permanent cinema. By another order, the Government had further instructed the licensing authorities not to grant a licence to a touring cinema within three miles of a place with a population of over 50000 even if there was no permanent cinema there, as the intention of the Government was to encourage the construction of permanent cinemas in such places. It was also provided that in a village, municipal or panchayat area adjoining a town with a population of over 50000 no touring cinema should be allowed within three miles of the nearest permanent cinema in the latter town. Licensing authorities were directed to strictly follow the instructions given in the earlier order of the Government as well as in the later order and not to make any relaxation to suit any individual case. The decision refusing to grant licence was challenged by the petitioner before the Madras High Court. On behalf of the petitioner the validity of the refusal by the Licensing Authority to grant licence to the petitioner

was challenged on the ground that it was based on instructions from the Government which were beyond the scope of the Act and were in contravention of the article (19 (1) (g) of the Constitution which conferred a right on the petitioner to carry on the business of running a touring cinema. Negativing the said contentions, the Division Bench of Madras High Court made following pertinent observations:

"(3) There is no substance whatever in the first ground. The Cinematograph Act was passed to make provision for regulating exhibitions by means of cinematograph. Under S.4, the licensing authority outside the Presidency town is the District Magistrate. But under S.5 (3) which confers a power on the licensing authority to grant licenses to such persons as it thinks fit and on such terms and conditions subject to such restrictions as it may determine, the licensing authority is subject to the control of the Provincial Government. It is presumably in exercise of this power of control that the instructions above mentioned were issued by the Government to the licensing authorities. It is not strictly accurate to speak of these instructions as rules framed under S.8 of the Act, and so it is not necessary to deal with the contention that they go beyond the rule-making power contained in S.8.

(4) The second ground evidently presupposes that the petitioner has an unfettered and unrestricted right to carry on the business of running a touring cinema at whatever place he likes. This obviously is not the correct position. Art. 19 (6) clearly contemplates that the State may impose reasonable restrictions in the interests of the general public on the exercise of the right conferred by Art.19 (1) (g) on every citizen to carry on any business. As was observed in the well-known case of 'NEBBIA v. NEW YORK', (1934) 291 U S 502: 78 Law Ed 940:

"The Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases. Certain kinds of business may be prohibited; and the right to conduct a business or to pursue a calling, may be conditioned. Regulation of a business to prevent waste of the State's resources may be utilised. And statutes

prescribing the terms upon which those conducting certain businesses may contract, or imposing terms if they do enter into agreements, are within the State's competency."

This principle was applied in a subsequent case by the Supreme Court of the United States in the matter of granting permits for the construction of radio broadcasting stations, 'FEDERAL COMMUNICATIONS COMMISSION v. POSTTSVILLE BROADCASTING CO.' (1940) 309 US 134: 84 Law Ed 656. In our opinion the instructions contained in the two Government Orders contain restrictions which are reasonable and in the interests of the general public. It is not difficult to perceive that the said restrictions are in the interests of the safety and the health of the general public and designed to prevent unhealthy competition which itself indirectly would have deleterious influence on the general public. It was not suggested that there has been any discrimination of any sort, nor has mala fides been alleged. It was said during the course of the arguments that the authority erred in considering that the area for which the license was asked for contains a population of over 50000; but we cannot canvass this fact which must be peculiarly in the knowledge of the licensing authority. In any event, it is not open to us in this application to embark on an enquiry as to the correct population figure of the area. There is no reason to interfere with the order of the licensing authority refusing to grant a license to the petitioner."

16. Again while explaining the scope of Article 19 (1) (g) (6) and 298 of the Constitution the Supreme Court in Krishnan Kakkanth v. Government of Kerala and others, (1997) 9 SCC 495 has held that reasonableness of restriction to carry on trade or business has to be determined from the standpoint of general public interest and circumstances relating to the trade or business in question and not from the standpoint of interest of the person on whom the restriction imposed even if restriction operates on him harshly.

17. In view of the above discussion it cannot be said that any right of the petitioner guaranteed under Article 19 (1) (g) of the Constitution is violated merely because the word "place" is interpreted to mean 'area' or the restriction is placed to the effect that the appellant

who is running a touring cinema would not be entitled to renewal of licence when permanent cinema has been established at Babra village.

18. The last contention that the Government could not have directed the licensing authority not to renew touring cinema licence granted to the appellant because of the establishment of permanent cinema at village Babra and that the order passed by the licensing authority in exercise of its quasi judicial power is vitiated because of the direction given by the State Government is devoid of merits. As observed earlier, the power of the licensing authority to grant licence under Section 5 (2) of the Act is subject to control of the State Government. The wide power of control of the State Government under Section 5 (2) is to guide the licensing authority in quasi judicial function of issuing licence under the Act and to issue appropriate instructions to the licensing authority in consonance with the provisions of the Act. The power of control can be exercised even after the decision is reached by the authority by exercising a supervisory control against every decision. The control could also be exercised at the later stage after the decision of the authority by even entertaining the appeal against the order improperly granting licence, even when no appeal is provided under Section 8-A against such order. Even in the absence of revisional jurisdiction under Section 8-B the wide power of control can be exercised for invoking revisional jurisdiction. This power of control is wide enough but the two authorities must remain distinct, and it is not open to the Government to obliterate the licensing authority completely by usurping its function either by executive instructions by way of control or by making a rule under the rule making section for that purpose. The instructions which were issued by the Government never sought to affect the jurisdiction of the licensing authority under the Act. The original jurisdiction of the licensing authority to issue a no objection certificate which is an essential step in the process of licensing was not interferred with by the instructions of the State which were essentially meant to guide the licensing authority. When the licensing authority contrary to the statutory provisions was at one stage inclined to renew touring cinema licence of the appellant the State Government was justified in guiding the licensing authority not to renew the same in exercise of its power of control in view of the second proviso to Rule 107 of the Rules. The power of control of State Government extends over the whole range of power to grant licences and the word 'control' has a very wide

connotation. The statute does not in any way delimit the ambit of controlling power. As in the case of State of Gujarat and another (supra), renewal of licence is not denied arbitrarily or claiming absolute discretion but is guided by the provisions of the Act as well as its object. The word 'control' is not confined to mere regulation. It is more comprehensive and includes domination or command over an inferior. The word 'control' envisaged in Section 5 (2) of the Act is not confined to the issuing of general directions. It includes an interference on the part of the State Government with the individual decision of a particular case by the licensing authority as well. Having regard to the facts of the case it cannot be said that the decision of the licensing authority not to renew the licence of the appellant on the ground that a permanent cinema is established at village Babra is in any way vitiated because of the exercise of controlling power of the State Government. The last submission of the learned counsel for the appellant, therefore, cannot be accepted and is hereby rejected. We may state that points that the impugned decision of the licensing authority is violative of provisions of Articles 14 and 21 of the Constitution were neither urged before the learned Single Judge nor before us and, therefore, we have not dealt with them.

19. The result of the above discussion is that we do not find any substance in any of the contentions urged on behalf of the appellant and the appeal is liable to be dismissed.

20. For the foregoing reasons, the appeal fails and is dismissed with no order as to costs.

(J.M. Panchal, J.)

27.3.2000. (A.M. Kapadia, J.)

(karan)